

**IN THE UNITED STATES FEDERAL DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

ERIKA KINSEY,

Plaintiff

v.

WATER FOR LIVING, LLC
d/b/a CBD LIVING,

Defendant

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PLAINTIFF’S COMPLAINT

Jury Demand Endorsed Hereon

NOW COMES, Plaintiff, Erika Kinsey, by and through undersigned counsel, and for her Complaint herein, states and avers as follows:

PARTIES

1. Plaintiff, Erika Kinsey, is an adult individual and resident of Ohio residing at 1793 Glenmount Ave., Akron, OH 44301.

2. Defendant, Water for Living, LLC d/b/a CBD Living (hereinafter “CBD Living”) is a limited liability company existing under the laws of Delaware and headquartered with its principal place of business at 705 E. Harrison Street, Corona, CA 92879, where the company’s members, managers, principals, and/or officers direct, control, and coordinate the company’s activities.

3. CBD Living’s registered agent for service of process is Virginia Provencio, 1343 Versante Circle, Corona, CA 92881.

4. CBD Living is in the business of commercialization, marketing, distribution, and sale of cannabidiol products for public consumption such as drinks, capsules, edibles, tinctures, topicals, and pet products in the United States and globally, including in the State of Ohio and within this Federal District.

5. At all times material and pertinent hereto, CBD Living acted through its registered agents, actual and/or ostensible agents, members, managers, owners, principals, officers, and/or employees.

JURISDICTION

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331(a)(1), diversity of citizenship.

7. Complete diversity of citizenship exists between the Plaintiff and Defendant, and a true case and controversy exists.

8. The amount in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs.

VENUE

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events or omissions giving rise to the claim occurred within the Northern District of Ohio.

COUNT I: BREACH OF CONTRACT

10. Plaintiff, Erika Kinsey is one of the world's top athletes competing globally in track and field events most prominently Women's High Jump. Erika Kinsey finished the 2019 season ranked 2nd internationally and finished the 2020 season ranked 7th internationally. Most recently, she competed in the 2020 Tokyo Olympics.

11. On August 21, 2019, Erika Kinsey entered into a written agreement with CBD Living "for the provision of services in the form of marketing and associated advertising assignments ...[.]" (hereinafter "Endorsement Agreement"). A copy of the Endorsement Agreement is attached hereto as Exhibit A.

12. Pursuant to the terms of the Endorsement Agreement, CBD Living was required to pay Erika Kinsey \$5,000.00 upon signing the contract, and \$12,000.00 per year for five years starting on January 31, 2020 and continuing until January 31, 2024, in exchange for Erika Kinsey's sponsorship and endorsement of CBD Living's products. See Endorsement Agreement, ¶¶ 3.1-3.7.

13. Upon execution of the Endorsement Agreement, Erika Kinsey began performing under the contract by sponsoring, endorsing, promoting, marketing, and/or advertising CBD Living.

14. Approximately two months into five-year term of the Endorsement Agreement, in or around October of 2019, CBD Living terminated the Agreement without cause.

15. To date, CBD Living has refused to pay Ms. Kinsey any of the money she is owed under the Endorsement Agreement despite repeated demands for the same.

16. Because of Defendant's failure to perform its obligations under the contract, Plaintiff has been damaged in the sum of \$65,000.00, no part of which has been paid.

WHEREFORE, as and for Count I, Plaintiff, Erika Kinsey, requests judgment in her favor and against Defendant, Water for Life, LLC d/b/a CBD Living, for:

- (a) Actual Damages in the sum of \$65,000.00, the amount due under the Endorsement Agreement, together with post judgment interests, costs of suit, reasonable expenses and attorneys' fees; and
- (b) Such other relief as this court deems just and proper.

COUNT II: VIOLATION OF SECTION 43(a) OF THE LANHAM ACT – UNFAIR COMPETITION AND FALSE ENDORSEMENT

17. Plaintiff re-alleges and incorporates by reference paragraphs 1-16 of this Complaint as set forth at length herein.

18. After CBD Living terminated the Endorsement Agreement in October of 2019, CBD Living continued to use Ms. Kinsey's name, image, identity, likeness, endorsement, and sponsorship for commercial purposes in connection with the sale and distribution of CBD Living's products.

19. As recently as late February 2021, Ms. Kinsey was still listed on CBD Living's website as a Sponsor at:

- <https://cbdliving.com/blogs/sponsorships>; and
- <https://cbdliving.com/blogs/sponsorships/erika-kinsey>.

20. Other than the terminated Endorsement Agreement, CBD Living has never received, nor has Erika Kinsey ever given her permission for CBD Living to use her name, image, identity, or likeness for commercial purposes or other purposes or to imply her association, endorsement, or connection with CBD Living's products.

21. After its unilateral termination of the Endorsement Agreement, CBD Living did not have Erika Kinsey's permission, written or otherwise, to use her name, image, identity, or likeness for commercial purposes or other purposes or to imply her association, endorsement, or connection with CBD Living's products.

22. CBD Living's unauthorized use of Erika Kinsey's name, image, identity, and likeness for commercial purposes implies Erika Kinsey's sponsorship and endorsement of Defendant's products when no such sponsorship or endorsement exists.

23. Defendant's unauthorized use of Erika Kinsey's name, image, identity, and likeness for commercial purposes, in interstate commerce:
- a. is likely to cause confusion, mistake or deception as to the affiliation, connection or association of CBD Living with Erika Kinsey or as to the origin, sponsorship, or approval of CBD Living's products by Erika Kinsey in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A);
 - b. misrepresents the nature, characteristics, or qualities of CBD Living's goods, services, or commercial activities in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

24. Plaintiff has been damaged by these acts, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

25. This case is an exceptional case pursuant to 15 U.S.C. § 1117(a).

WHEREFORE, as and for Count II, Plaintiff, Erika Kinsey, requests judgment in her favor and against Defendant, Water for Life, LLC d/b/a CBD Living, for:

- (a) Actual damages in an amount in excess of \$75,000.00, such damages to be trebled pursuant to 15 U.S.C. § 1117;
- (b) Disgorgement of Defendant's profits;
- (c) Plaintiff's court costs and expenses;
- (d) Plaintiff's reasonably-incurred attorneys' fees;
- (e) Punitive and/or exemplary damages sufficient to deter similar conduct by Defendant in the future; and,
- (f) Such other relief as this Court deems just and proper.

**COUNT III: VIOLATION OF THE OHIO RIGHT TO PUBLICITY STATUTE, OHIO
REV. CODE ANN. § 2741.02, et seq.**

26. Plaintiff re-alleges and incorporates by reference paragraphs 1-25 of this Complaint as set forth at length herein.

27. Defendant's misappropriation of Erika Kinsey's right of publicity and unauthorized use of Erika Kinsey's persona for commercial purposes or other purposes or to imply her association, endorsement, or connection with CBD Living's products is a violation of the Ohio Right of Publicity Statute, Ohio Rev. Code Ann. § 2741.02, et seq., in that Defendant used Erika Kinsey's persona for commercial purposes without her written consent and permission.

28. Defendant's use of Plaintiff's persona was unauthorized because other than the Endorsement Agreement, which was terminated without cause in October of 2019, CBD Living has never received, nor has Erika Kinsey ever given her permission for CBD Living to use her persona for commercial purposes or other purposes or to imply her association, endorsement, or connection with CBD Living's products.

29. Defendant's use of Plaintiff's identity was willful, wanton, reckless, and/or outrageous because Defendant used Erika Kinsey's persona intentionally and with knowledge that Defendant's use was not authorized.

30. Plaintiff has been damaged by these acts, all in violation of the Ohio Right of Publicity Statute, Ohio Rev. Code Ann. § 2741.02, et seq.

WHEREFORE, as and for Count III, Plaintiff, Erika Kinsey, requests judgment in her favor and against Defendant, Water for Life, LLC d/b/a CBD Living, for:

- (a) Actual damages, including any profits derived from and attributable to the unauthorized use of Plaintiff's personal for commercial purpose, in an amount in

excess of \$75,000.00, such amount to be trebled pursuant to Ohio Rev. Code Ann. § 2741.07(D)(2);

- (b) Reasonable attorneys' fees, court costs, and reasonable expenses associated with this action;
- (c) Punitive and/or exemplary damages sufficient to deter similar conduct by Defendant in the future; and,
- (d) Such other relief as this Court deems just and proper.

**COUNT IV: VIOLATION OF THE OHIO DECEPTIVE TRADE PRACTICES
STATUTE, OHIO REV. CODE ANN. § 4165.01, et seq.**

31. Plaintiff re-alleges and incorporates by reference paragraphs 1-30 of this Complaint as set forth at length herein.

32. CBD Living's unauthorized use of Erika Kinsey's name, image, identity, and likeness for commercial purposes constitutes a violation of the Ohio Deceptive Trade Practices Statute, Ohio Rev. Code Ann. § 4165.01, et seq., in that Defendant's engaged in deceptive trade practices when, during Defendant's business, Defendant:

- a. Created a likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of its goods and services in violation of Ohio Rev. Code Ann. § 4165.02(A)(2);
- b. Created a likelihood of confusion or misunderstanding as to Defendant's affiliation, connection, or association with, or certification, by Plaintiff in violation of Ohio Rev. Code Ann. § 4165.02(A)(2);
- c. Represented that the goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that Defendant had a sponsorship, approval, status, affiliation, or connection that Defendant did

not have in violation of Ohio Rev. Code Ann. § 4165.02(A)(7).

33. Defendant's use of Plaintiff's identity was willful, wanton, reckless, and/or outrageous because Defendant used Erika Kinsey's persona intentionally and with knowledge that Defendant's use was not authorized.

34. Plaintiff has been damaged by these acts, all in violation of the Ohio Deceptive Trade Practices Statute, Ohio Rev. Code Ann. § 4165.01, et seq.

WHEREFORE, as and for Count IV, Plaintiff, Erika Kinsey, requests judgment in her favor and against Defendant, Water for Life, LLC d/b/a CBD Living, for:

- (a) Actual damages, in an amount in excess of \$75,000.00,
- (b) Reasonable attorneys' fees, court costs, and reasonable expenses associated with this action;
- (c) Punitive and/or exemplary damages sufficient to deter similar conduct by Defendant in the future; and,
- (d) Such other relief as this Court deems just and proper.

COUNT V: VIOLATION OF THE COMMON LAW RIGHT TO PUBLICITY

35. Plaintiff re-alleges and incorporates by reference paragraphs 1-34 of this Complaint as set forth at length herein.

36. Defendant's misappropriation of Erika Kinsey's right of publicity and unauthorized use of Erika Kinsey's persona for commercial purposes or other purposes or to imply her association, endorsement, or connection with CBD Living's products is a violation of Plaintiff's common law right of publicity.

37. Defendant's use of Plaintiff's identity was willful, wanton, reckless, and/or outrageous because Defendant used Erika Kinsey's persona intentionally and with knowledge

that Defendant's use was not authorized.

38. Plaintiff has been damaged by these acts, all in violation of Plaintiff's common law right to publicity.

WHEREFORE, As and for Count V, Plaintiff, Erika Kinsey, requests judgment in her favor and against Defendant, Water for Life, LLC d/b/a CBD Living, for:

- (a) Actual damages, in an amount in excess of \$75,000.00;
- (b) Punitive and/or exemplary damages; and
- (c) Such other relief as this Court deems just and proper.

Respectfully Submitted,

GRIFFIN LAW, LLC

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*Out-of-State Counsel for Plaintiff, pro hac vice
admission to be obtained*

JURY DEMAND

Plaintiff, Erika Kinsey, hereby demands a trial by jury upon all Counts I-V set forth within her Complaint.

Respectfully Submitted,

GRIFFIN LAW, LLC

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